

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

**TINA WENKE and WENKE DESIGN, LLC §
d/b/a WENKE DESIGN STUDIO, §**

Plaintiff, §

v. §

**DOLLAR GENERAL CORPORATION, §
DOLGENCORP, LLC, and §
BIG TREE SALES, INC. d/b/a BIG TREE §**

Case No. 3:24-cv-00877

Chief Judge Campbell

**Magistrate Judge
Frensley**

DEFENDANTS' MOTION TO DISMISS COUNTS IX AND X WITH PREJUDICE

Defendants, Dollar General Corporation (“Dollar General”), Dolgencorp, LLC (“Dolgencorp”), and Big Tree Sales, Inc. d/b/a Big Tree (“Big Tree”) (collectively “Defendants”), by and through their attorneys, respectfully move the Court pursuant to Fed. R. Civ. P. 12(b)(6) to dismiss Plaintiffs’ Complaint filed by Plaintiffs Tina Wenke (“Ms. Wenke”) and Wenke Design, LLC d/b/a Wenke Design Studio (“Wenke Design”) (collectively “Plaintiffs”) in part, as Claims IX and X fail to comply with the minimum pleading standard mandated by *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

As explained more fully in the Memorandum in Support of Their Motion to Dismiss Count IX and X with Prejudice (“Memorandum”), which Defendants incorporate by reference as if fully restated herein, Defendants move to dismiss Plaintiffs’ claims for reverse passing off and passing off under the Lanham Act (Counts IX and X) because Plaintiffs are not manufactures of a tangible product, there is no recognizable trademark on Defendants’ products that would confuse customers, and Plaintiffs failed to bring certain claims, identified in Count IX and X, within the

appropriate time frame as required under Ohio Rev. Code § 2305.10, made applicable through Tenn. Code Ann. § 28-1-112.

Defendants respectfully request that this Court dismiss Counts IX and X of Plaintiffs' Complaint, with prejudice, and award Defendants such further relief as the Court deems just and proper.

Submitted, this 7th day of October 2024.

Respectfully submitted,

/s/ Stephan R. Wright
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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that the foregoing has been filed electronically with the Clerk of the United States District Court for the Middle District of Tennessee, Nashville Division, using the Court's CM/ECF system, which shall send notification or such filing to all counsel of record. Further notice was sent via electronic correspondence to the following:

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This 7th day of October 2024.

/s/ Stephan R. Wright
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